

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 826 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAJUJI NAVUJI CHAVDA

Appearance:

Ms.Hansa Punani, ADDITIONAL PUBLIC PROSECUTOR for
the Petitioner.

MR Bharat K. DAVE for Respondent No. 2, 3

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 25/11/1999

ORAL JUDGEMENT : (Per M.H. Kadri, J.)

The appellant/ State of Gujarat has challenged the judgement and order dated August 31, 1991 of the learned Additional Sessions Judge, Mehsana, in Sessions Case No.226 of 1990, whereby the respondents came to be acquitted of offences punishable under sections 498A, 304B, 306 and 114 of the Indian Penal Code ("IPC" for brevity).

2. The prosecution case is summarised as under:

Deceased, Kailasba was married to respondent no.2, Vikramsinh Rajuji Chavda, in the year 1985. Respondent no.1, Rajuji Navuji Chavda, was the father in law of Kailasba, who expired on 10.7.1996, i.e. during the pendency of this Appeal. The Appeal is, therefore, abated so far as respondent no.1 is concerned. As per the case of the prosecution, after the married life of 3 years, demand of dowry was made by the respondents from Kailasba taunting her that at the time of marriage she was not given by her parents refrigerator, television, scooter, etc. The respondents used to beat her and taunt her and they were causing mental cruelty on the deceased, Kailasba as she was not able to bear a child even after five years of married life. As Kailasba was not able to bear a child, a proposal was sent by the respondents to the father of Kailasba to give his second daughter, Pravinaben in marriage with respondent no.2, Vikramsinh; in the alternative it was demanded that the parents of Kailasba should give an amount ranging from Rs.20,000/to Rs.25,000/-. It is alleged by the prosecution that this had caused great mental agony and torture on Kailasba. As per the prosecution case when Kailasba used to go to her parental house, she was complaining about the mental and physical torture and harassment by her in laws. On August 1, 1990, at about 0930 hours, Kailasba had sprinkled kerosene on her body and set herself afire by igniting a match stick on her body. At the relevant time, respondents nos.2 and 3 had gone for Darshan at Somnath temple. The brother of respondent no.2, namely, Arvindkumar was sleeping at the relevant time, who woke up to the shouts of Kailasba and ran to the Police Station to inform that Kailasba has set her ablaze in the house at 0930 hours. Said Arvindkumar had also informed the Police Station Incharge of Mehsana City Police Station that since Kailasba was under mental tension because of her not being able to bear a child, she has committed suicide. The information was noted by the Police Station Incharge of the Mehsana Police Station around 1205 hours.

3. Shri Naginbhai Kalidas Barot, who was at the relevant time discharging duties as Police Sub Inspector in Mehsana City Police Station, went to the scene of offence, i.e. house of respondent no.2 and prepared inquest report in the presence of the Executive Magistrate. A Panchnama of the scene of offence was drawn in presence of the Panchas. The dead body of Kailasba was sent to the Civil Hospital, Mehsana for

Postmortem Examination. Dr. Natwarlal Ramjibhai Joshi performed the Postmortem of the dead body of Kailasba from 3.30 PM to 5.00 PM. It may be mentioned here that the dead body as per the Inquest Panchnama was identified by the brother of Kailasba, namely, Rameshji Rajuji. As the offence registered was with respect to suicide committed by a married woman within a span of seven years of her married life, the investigation was handed over to the Deputy Superintendent of Police, Shri Jivanbhai Bhoi. The father of Kailasba, Rajuji Shivaji Vihol lodged complaint with the Deputy Superintendent of Police, Shri Bhoi at 1815 hours on August 1, 1990. Said complaint was registered as CR No.I- 301/90 for offences punishable under sections 304B, 306, 498A and 114 of IPC. The Investigating Officer, Shri Bhoi recorded statements of witnesses and on completion of the investigation submitted charge sheet against the respondents in the Court of learned Chief Judicial Magistrate, Mehsana, which was registered as Criminal Case No.4982 of 1990. As the case of offences punishable under sections 304B and 306 of IPC is exclusively triable by the Court of Sessions, the learned Chief Judicial Magistrate committed the case to the Court of Sessions at Mehsana, which was numbered as Sessions Case No.226 of 1990 in the Court of Sessions at Mehsana.

4. Charges vide Exhibit 9 were framed against the respondents for the offences punishable under sections 498A, 304B, 306 read with sec.114 of IPC. The charge was read over and explained to the respondents and they pleaded not guilty and came to be tried. In order to bring home the guilt of the respondents, the prosecution examined the following witnesses.

PW No. Name Exh. No.

01 Shri Natvarbhai Ramjibhai Joshi 20
02 Shri Rajuji Shivaji Vihol 23
03 Shri Satuba Rajuji 24
04 Shri Pratapji Shivaji Vihol 25
05 Shri Kanubhai alias Harshadbhai
Chimanlal Bhatt 26
06 Shri Pravinbhai Rajuji 27
07 Shri Girishkumar Ramanlal Jayswal 28
08 PSI, Shri Naginbhai Kalidas Barot 30
09 Investigating Officer, Shri Jivabhai
Punjabhai Bhoi 32

5. The prosecution produced documentary evidence, such as, information lodged by Arvindkumar, Exh.41, Inquest Panchnama, Postmortem Notes, Panchnama of the scene of offence, complaint lodged by Rajuji, report of the Forensic Science Laboratory, etc. in order to prove the case against the respondents.

6. After evidence of the prosecution was over, the learned Additional Sessions Judge questioned the respondents and their statements came to be recorded under sec.313 of the Code of Criminal Procedure. In their statements, the respondents stated that they had not committed any offence and they are falsely involved in the case. The respondents did not, however, examine any witnesses in support of their defence.

7. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence produced by the prosecution concluded that the investigating agency had not recorded the statement of the neighbours of the respondents to indicate as to under what circumstances Kailasba had committed suicide. The learned Additional Sessions Judge further concluded that in absence of evidence of neighbours, who were residing near the house of the respondents, it was not possible to hold that Kailasba had committed suicide as a result of mental cruelty and demand of dowry by the respondents. However, the learned Additional Sessions Judge observed that he was of the opinion that the evidence of the prosecution witnesses was not doubtful. The learned Additional Sessions Judge on the basis of the above referred to conclusions by his cryptic and slipshod judgment and order acquitted the respondents from the offence punishable under secs.498A, 304B, 306 read with sec.114 of IPC, which gave rise to filing of this appeal by the appellant State of Gujarat.

8. Learned Additional Public Prosecution, Ms.Hansa Punani has taken us through the entire evidence produced by the prosecution at the trial and has submitted that the prosecution has led sufficient evidence by examining parents of Kailasba, uncle of Kailasba, sister Pravinaben and independent witness, Kanubhai Bhatt to prove guilt of the respondents. It is vehemently submitted by the learned Additional Public Prosecutor for the appellant that Kailasba had committed suicide within a span of five years of her married life and therefore, presumption should be drawn that she has committed suicide because of the mental cruelty and harassment and demand of dowry by the respondents. Learned APP for the appellant further

stressed that the prosecution has led sufficient evidence before the Sessions Court which was totally ignored by the learned Additional Sessions Judge and in a most cryptic and slipshod manner the learned Sessions Judge without appreciating the evidence produced by the prosecution has acquitted the respondents and therefore, the appeal be allowed and the order of acquittal be set aside.

9. Learned counsel for the respondents, Shri Bharat

K. Dave has vehemently submitted that the prosecution has only examined witnesses who were closely related to Kailasba and there were many contradictions, omissions and improvements in their evidence and therefore, the learned Sessions Judge was justified in rejecting their evidence and acquitting the accused. Learned counsel for the respondents contended that the evidence of the prosecution with regard to harassment and cruelty on Kailasba was not reliable and therefore, the learned Additional Sessions Judge had rightly discarded the oral testimony of the witnesses with regard to cruelty meted out to Kailasba. It is contended by the learned counsel for the respondents that the respondents had not abetted Kailasba to commit suicide and there was no evidence that because of the cruelty meted out by the respondents, Kailasba was forced to commit suicide. It is contended by the learned counsel for the respondents that as Kailasba did not bear a child, a proposal was sent to the parents of Kailasba to give Pravinaben in marriage with respondent no.2, Vikramsinh. In the light of the above facts, it is contended by the learned counsel for the respondents that this was not sufficient to cause mental cruelty and harassment to Kailasba so as to lead her to commit suicide. Learned counsel for the respondents submitted that the investigation was carried out by the officer concerned in a most faulty manner and though statements of neighbours of the respondents were recorded during investigation, said persons were not cited as witnesses in the charge sheet. The prosecution, therefore, has tried to bolster its case by not unfolding the true picture with regard to committing of suicide by Kailasba. Lastly it is submitted by the learned counsel for the respondents that there was no sufficient evidence produced by the prosecution to prove beyond reasonable doubt that the respondents had committed the alleged offences and therefore, the appeal be dismissed.

10. Learned Additional Public Prosecutor, Ms.Punani

has read out to us the evidence of PW 2, Rajuji Shivaji Vihol, Exh.23, who is the father of the deceased Kailasba. The evidence of this witness shows that two

years prior to the death of Kailasba disputes started between Kailasba and the respondents as Kailasba did not bear a child. It is stated by the witnesses that on 2- 3 occasions because of the disputes and harassment, Kailasba had come to his house. The witness further claimed that when Kailasba had returned to his house she had complained that the respondents were harassing her as she has not brought enough dowry from her parents at the time of her marriage. The evidence of this witness also suggests that Vikramsinh was forcing them to give Pravinaben in marriage with him and when Pravinaben refused to get herself married with Vikramsinh, Vikramsinh got enraged and conveyed to the witness that he has three daughters and that he should wipe off her third daughter. In the cross examination, the witness had to admit that his son, Rameshji was serving as Police Constable at Mehsana City Police Station. During searching cross examination of the witness by the learned counsel for the defence it was brought on record that in the complaint he has not mentioned that the respondents had demanded dowry from Kailasba. It was also brought out during the cross examination of this witness that in his statement before Police he had not stated that 10--12 days prior to the incident, Kailasba had returned to his house and had cried and on inquiry she has disclosed that the respondents had told her not to return to Mehsana and she should drown herself in a well. The cross examination of this witness shows that there are many contradictions and improvements made by this witness, which causes serious doubt in our mind as to the demand of dowry and harassment meted out by the respondents to Kailasba.

11. PW3, Satuba Rajuji, Exh.24, who is the mother of the deceased Kailasba also deposed before the Sessions Court that as Kailasba did not a bear child since last two years she was harassed by her in laws and when she visited the parental house, she was complaining that there was physical and mental cruelty and harassment meted out to her by the respondents. She further deposed that one month prior to the incident in question, Kailasba in the company of the respondents had come to her house and at that time the neighbours, namely Kanubhai Bhatt and Pratapji were present. She further stated that 10- 12 days prior to the date of the incident in question also Kailasba had come to her house and at that time she was crying and on inquiry she had disclosed that respondent no.2 was asking Kailasba that her sister, Pravinaben should be given in marriage with respondent no.2; in the alternative the parents of Kailasba should give respondent no.2 an amount ranging from Rs.20,000/-to

Rs.25,000/-. In the cross examination the witness admitted that in her statement before the Investigating Officer she has not stated that Kailasba was meted out with cruel treatment physically and mentally since last two years prior to the date of incident in question. This witness also admitted during her cross examination that in her statement before the Police, she has not stated that there was a demand of dowry from the respondents. The cross examination of this witness disclosed that the witness has tried to improve her statement made before the Investigating Officer. There are many contradictions which have come record to indicate that this witness is not reliable and truthful and she has tried to make out a new story of demand of dowry and harassment caused to the deceased Kailasba. The learned Additional Sessions Judge has also observed that during cross examination, the witness had tried to avoid certain questions put to her on the pretext that she, being an illiterate lady, did not understand the questions. The evidence of this witness does not prove that the deceased Kailasba was meted out with harassment and cruelty by the respondents, which led her to commit suicide on the fateful day.

12. The evidence of the uncle of Kailasba, namely, PW 4, Pratapji Shjivaji Vihol, Exh.25, also does not inspire confidence as he has made many improvements in his evidence before the Court as compared to the statement made by him before the Police during the investigation. During the cross examination this witness admitted that his younger brother, Dilipsinh, serving in the Police Department, was summoned from Unjha to Mehsana on the day of the incident by sending wireless message. From the cross examination of this witness it is born out that the father, Rajuji has filed the complaint after arrival of Dilipsinh from Unjha. This circumstance indicates that the First Information Report was lodged by the father of Kailasba in the evening of 1st August 1990, after due deliberations with his son Rameshji and younger brother Dilipsinh, who were serving with the Police Department. The evidence of witness, Pratapji, in our opinion, does not prove that there was constant harassment and cruelty meted out to Kailasba by the respondents, which led her to commit suicide on August 1, 1990.

13. The prosecution further relied on the evidence of PW 5, Kanubhai alias Harshadbhai Chimanlal Bhatt, Exh.26. This witness claims to be the neighbour of Rajuji, the father of Kailasba. This witness has arrived at the Civil Hospital, Mehsana on hearing the news of death of Kailasba. The evidence of this witness does not prove

beyond doubt that the respondents were demanding dowry from Kailasba and she was harassed by the respondents as she did not bear a child. From the oral testimony of this witness it can be inferred that this witness is not a truthful witness when he claims to be present when the respondents used to visit the house of Rajuji. This witness has also tried to exaggerate and improve his oral testimony to bolster the case of the prosecution against the respondents.

14. It is an admitted fact that Kailasba, after married life of five years was not able to bear a child and respondent no.2 had made a proposal for his marriage with the younger sister of Kailasba, namely, Pravinaben, which was turned down by Pravinaben. But this fact alone cannot be said to have caused cruelty on Kailasba so as to take the hasty step of committing suicide. Kailasba was under great tension as she was not able to bear a child even after five years of her married life. This mental tension might have caused her to take the ultimate step of committing suicide. It may be stated that when Kailasba committed suicide, respondents nos.2 and 3 were not present at their residence. There is no cogent and reliable evidence produced by the prosecution to suggest that the mental cruelty meted out by the respondents has caused her to take the drastic step of committing suicide. There is no iota of evidence that the respondents had abetted Kailasba to commit suicide.

15. It is true that Kailasba has committed suicide within a span of five years of her married life. The investigation carried out by the Deputy Superintendent of Police, Shri Bhoi, to certain extent was one sided. He had not produced a clear picture of the prosecution before the Court. Some statements of the neighbours, who were residing near the house of the respondents, were recorded, but those statements were kept in dark and no witnesses who were residing in the neighbourhood of the respondents were cited as witnesses in the charge sheet. It was the duty of the Investigating Officer to unfold the real story about the incident before the Court. The Investigating Officer has projected one sided picture just to bolster the case of the prosecution. The witnesses examined by the prosecution had made many improvements in their evidence and there were many contradictions in their evidence which were proved by the Investigating Officer himself.

16. This being an acquittal appeal, when there are two views possible, the view taken by the trial court which goes in favour of the accused should prevail.

Though the judgement and order of the Sessions Court is cryptic and written in a slipshod manner, the evidence of the prosecution witnesses does not show that it is palpably wrong, manifestly erroneous and demonstrably unsustainable. The trial court had an opportunity of watching the demeanour of the witnesses. Even the learned Additional Sessions Judge has observed at the time of recording evidence that some of the witnesses were hesitating to give correct answers to the questions put by the learned counsel for the defence. This demeanour of the prosecution witnesses clearly indicated that they were not telling truth before the Court and trying to make out a false case to involve the respondents. However, though the learned Additional Sessions Judge had not given cogent and convincing reasons, we have carefully scanned through the evidence of the prosecution witnesses and we are satisfied that the evidence of the witnesses does not prove beyond reasonable doubt that the deceased Kailasba was meted out with cruelty and harassment by the respondents, which ultimately resulted in committing suicide by Kailasba. The evidence of the prosecution witnesses does not prove beyond reasonable doubt that the respondents had abetted in committing suicide by Kailasba. We are of the view that the prosecution has not led reliable and cogent evidence to prove the charges levelled against the respondents.

17. As a result of the foregoing discussion, we are of the opinion that the appeal is meritless and it deserves to be dismissed. Accordingly the Appeal is dismissed. The muddamal be destroyed in terms of the directions given in the impugned judgement.

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